

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION
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Master File No. 09 MD 2058 (PKC)

MEMORANDUM AND ORDER

THIS DOCUMENT RELATES TO:

CONSOLIDATED SECURITIES ACTION
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CASTEL, District Judge:

Today, counsel for Flanagan, Lieberman, Hoffman & Swaim (the “Flanagan Firm”) called to the Court’s attention the issuance of the mandate of the United States Court of Appeals on the issue of the plaintiffs’ fee application as it relates to the fees and expenses of the Flanagan Firm. The Court of Appeals noted as follows:

[W]e observe that the district court must be mindful that it must act “as a guardian of the rights of absent class members” in assessing whether a presumption of correctness has been properly refuted and then, if indeed it has, determining on its own the appropriate fee allocation. That role may require more where, as here, no natural party may step forward seeking to rebut a presumption of correctness or argue against a fee allocation.

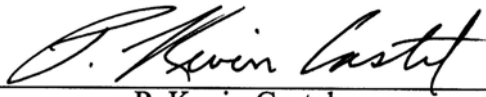
Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Employees Ret. Sys., 814 F.3d 652, 659-60 (2d Cir. 2016) (citation omitted).

As the Court reads the Circuit’s holding, silence in the face of the presumption of correctness is insufficient to enable a district court to acquit its guardian role. The parties, the Flanagan Firm and any interested class member are invited to submit to the Court any evidence and argument on the issue of the “more” that is required of the district court “where, as here, no natural party may step forward seeking to rebut a presumption of correctness or argue against a fee allocation.” The Court will require an affidavit (with accompanying time sheets) from the

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Flanagan Firm establishing the date, time, duration and nature of all communications between the Flanagan Firm and (a) the State Teachers Retirement System of Ohio and the Ohio Public Employees Retirement System; (b) the Office of the Attorney General of Ohio; and (c) Co-Lead Plaintiffs' counsel. All submissions are due by May 23, 2016.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
May 6, 2016